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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 722

V. J. ADAMS, TRUSTEE FOR GENERAL BOX COMPANY, INC., BANKRUPT,

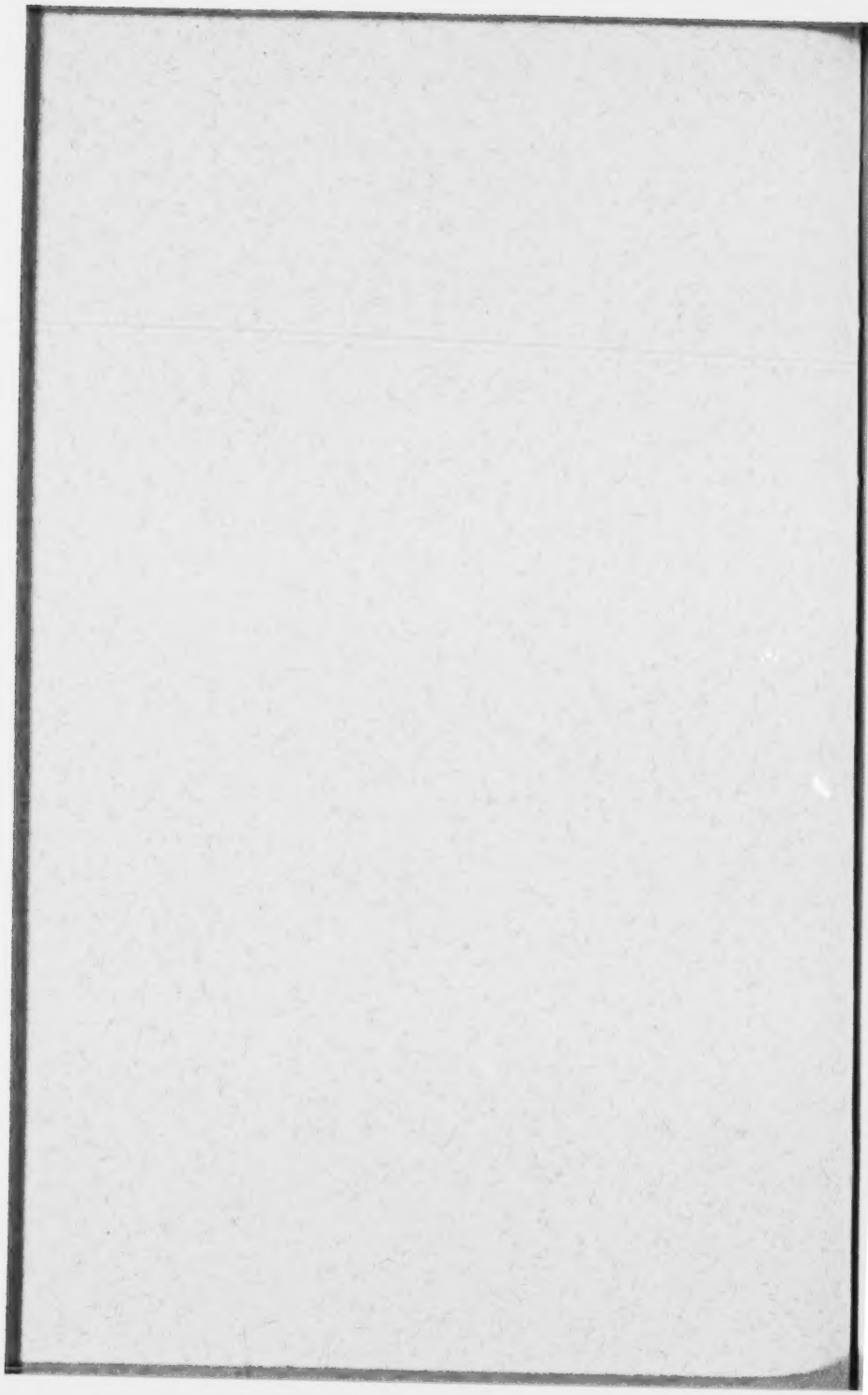
Petitioner,

vs.

CITY BANK AND TRUST COMPANY OF MACON, GEORGIA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

T. BALDWIN MARTIN,
Counsel for Petitioner.



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PETITION FOR WRIT OF CERTIORARI.

May it please the Court:

The petition of V. J. Adams, Trustee for General Box Company, Inc., Bankrupt, respectfully shows to this honorable Court:

I. A Statement of the Matter Involved.

On December 30, 1939, the General Box Company, Inc. of Macon, Georgia, was adjudicated a bankrupt upon its voluntary petition.

Previously it had borrowed from the City Bank and Trust Company of Macon, Georgia, $1,900.00, and simultaneously therewith executed bills of sale to secure debts covering

portions of its property. Nevertheless, the bills of sale were not recorded until December 19, 1939, at a time when the company was insolvent and the bank had reasonable cause to believe it was insolvent. During the interval between the execution and recordation the bankrupt incurred debts and purchased on credit additional goods which augmented the stock mortgaged to the bank.

The trustee, contending that the bills of sale should be deemed to have been made as of the date of recording since they were not perfected as against a *bona fide* purchaser until then, sought to avoid them under section 60 (a) and (b) of the Bankruptcy Act of 1938. (Title 11, U. S. C. A. Sec. 96 (a) and (b).)

The referee sustained the trustee, but he was reversed by the district judge. The Circuit Court of Appeals affirmed the district judge, holding in effect that the language of section 60, that for the purposes of sub-sections (a) and (b) a transfer shall be deemed to have been made at the time when it became so far perfected as to prevail over bona fide purchasers and creditors, counted for naught in determining the question of antecedency of the debt for which the transfer was given.

The decision of the Circuit Court of Appeals was on November 15, 1940.

II. Statement Disclosing Court's Jurisdiction.

The statute of the United States involved is as follows:

> "a. A preference is a transfer, as defined in this Act, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition in bankruptcy, or of the original petition under Chapter X, XI, XII, or XIII of this Act, the

effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class. For the purposes of subdivisions a and b of this section, a transfer shall be deemed to have been made at the time when it became so far perfected that no bona fide purchaser from the debtor and no creditor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, and, if such transfer is not so perfected prior to the filing of the petition in bankruptcy or of the original petition under Chapters X, XI, XII, or XIII of this Act, it shall be deemed to have been made immediately before bankruptcy.

"b. Any such preference may be avoided by the trustee if the creditor receiving it or to be benefited thereby or his agent acting with reference thereto has, at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent * * *."

Sec. 60 (a) and (b) of the Bankruptcy Act of 1938, Title 11, U. S. C. A. Sec. 96 (a) and (b).

This Court has jurisdiction to review the judgment of the Circuit Court of Appeals under Title 11, U. S. C. A., Sec. 48 (c), and Title 28, U. S. C. A. Sec. 347.

III. Question Presented.

Whether, in order to be avoided as a preference, a transfer must have been made for or on account of a debt antecedent to the time when the transfer was actually made by the debtor or whether it is sufficient if the debt was antecedent to the time when the transfer must be deemed to have been made, that is, when the transfer became so far perfected that ~~on~~ no bona fide purchaser from the debtor and no creditor could thereafter have acquired any rights in the property transferred superior to the rights of the transferee.

IV. Reasons Relied On for the Allowance of the Writ.

The Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court.

The Court of Appeals has frittered away the most vital provision of Section 60—the most sorely needed and the most prized reform of the entire Act of 1938.

The abolition of secret liens was one of the paramount attainments of the Chandler Act. The radical, elaborate and precise rewording of section 60 was in response to the long and insistent demand of credit associations and others concerned in the administration of the bankruptcy law for the elimination of secret liens; but verily under the decision of the Circuit Court of Appeals secret liens, instead of being abolished, are better protected than ever before.

The importance of the question involved is indicated by the intention of the Congress in the enactment of the Chandler Act.

> "The new test is more comprehensive and accords with the contemplated purpose of striking down secret liens. It is provided that the transfer shall be deemed to have been made when it became so far perfected that neither a bona fide purchaser nor creditor could thereafter have acquired rights superior to those of the transferee. As thus drafted, it includes a failure to record and any other ground which could be asserted by a bona fide purchaser or a creditor of the transferor, as against the transferee * * *."
>
> (Report No. 1409 HR 8046 July 29, 1937, 75th Congress, 1st Session.)

The volume of credit transactions daily increases. A decision of this question is vital to merchants, bankers and to all who are engaged in mercantile transactions, indeed even to the lowliest of employees, for that the rights of all

will be subordinated to the unrecorded and unperfected secret lien under the decision of the Court of Appeals.

Furthermore an orderly and uniform administration of the bankruptcy law calls for a settlement of this question by this Court.

Your petitioner presents herewith as a part of this petition a certified copy of the transcript of the record in the courts below, and will present its brief for consideration with this petition, discussing at greater length the question involved.

WHEREFORE, your petitioner prays that a writ of certiorari may be issued as of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding the said court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of said court, entitled V. J. Adams, Trustee for General Box Company, Inc., Bankrupt *v.* City Bank and Trust Company, and numbered 9655 in said court, and that said judgment of the United States Circuit Court of Appeals for the Fifth Circuit may be reversed by this honorable Court, and that your petitioner may have such other and further relief in the premises as to this honorable Court may seem meet and just.

V. J. ADAMS,
Trustee for General Box Company, Inc., Bankrupt,
By T. BALDWIN MARTIN,
Attorney for Petitioner.